UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1994/SR.47
6 December 1994

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eleventh session

SUMMARY RECORD OF THE 47th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 2 December 1994, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. ALVAREZ VITA

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GE.94-70331 (E)

The meeting was called to order at 10.15 a.m.

ORGANIZATION OF WORK (agenda item 2) (continued)

Statement by the World Health Organization

1. Ms. TIMBERLAKE (World Health Organization (WHO)) introduced a document (A20/180/10) detailing HIV/AIDS-related issues that arose under relevant articles of the International Covenant on Economic, Social and Cultural Rights and some possible questions that might be raised concerning those issues. She hoped that it would serve to strengthen the reporting guidelines and provide useful guidance to the Committee as it considered thematic issues and discussed with States parties the nature of their obligations. The interrelationship between health and human rights had never before been so clearly demonstrated as during the present pandemic. She summarized the most recent statistics of the WHO Global Programme on AIDS, according to which more than 16 million people had been infected by HIV/AIDS from the late 1970s until mid-1994; more than 10 million of them were in sub-Saharan Africa, but Asia was a time bomb about to explode, and by the year 2000, it would have caught up with and surpassed Africa. WHO was projecting that by the year 2000, there would be some 40 million people infected and that 12 to 18 million would actually have AIDS. Women constituted nearly one half of all newly-infected adults, while youths aged 15 to 24 years were the hardest hit group, comprising 50 per cent of all infections; in some countries where they constituted 60 per cent, there was a two to one ratio of girls to boys infected. In addition, more than 1 million children were infected with HIV. The socio-economic impact of the pandemic was undoing many of the development gains that had been achieved. The Paris AIDS summit which had been held on the occasion of World AIDS Day, had been convened in reaction to the malaise which existed among Governments about the fact that fewer resources were being devoted to HIV/AIDS, and that there was some complacency which made it difficult to maintain the momentum of the fight against AIDS. Some of the ways in which HIV/AIDS directly affected the economic, social and cultural rights of the sufferers were particularly applicable to women, such as their lack of access to preventive education, information and health care, their inability to negotiate safe sex or leave a relationship with an infected person, their lack of property rights enabling them to survive on their own, and certain traditional practices, such as widows' inheritance rights and female circumcision. Children suffered also from sexual abuse; the estimated 100 million street children worldwide were particularly subject to various forms of sexual exploitation and drug abuse. Rights of HIV/AIDS sufferers were also violated by their being prevented from travelling abroad to pursue their education and, in the field of health, by their being segregated and denied access to drugs and condoms as well as by a lack of confidentiality and the mandatory testing of pregnant women, which frequently caused people to lose their jobs and their housing. Similarly in employment, mandatory testing before hiring or while employed; segregation and harassment; and denial of benefits were among the ways in which rights were violated. At the Paris AIDS summit, a main issue had been the human rights factor. The participants in the summit had declared that all persons should be able to realize the full enjoyment of all their rights and to benefit from equal protection under the law with regard to access to health, education, travel and social welfare.

2. The CHAIRPERSON said that the document submitted by the World Health Organization would be translated and issued subsequently as a Committee document.

Information management support for human rights functions

3. Ms. CHAPMAN (American Association for the Advancement of Science) introduced her organization's concept paper for the design and implementation of an information management system. The project had been undertaken at the request of the Assistant Secretary-General for Human Rights and the chairpersons of the human rights treaty-monitoring bodies, including the Committee. One of the major problems in the work of those bodies was the absence of a computerized information system which would enable them to compare reports by States parties that had been submitted to the different bodies and to utilize the data collected by specialized agencies and others more readily. The Association was undertaking a planning and feasibility study to create an information management system for the human rights treaty-monitoring functions. The goals of the system included the creation and maintenance of country files that would integrate country data in the States parties, reports to the treaty-monitoring bodies with relevant statistical and country data collected by the secretariat, specialized agencies and non-governmental organizations. Another goal was to provide enhanced information management support for the treaty bodies and the secretariat in their tasks of research, coordination, deliberation, decision-making, presentation and reporting. The Association had met with the chairpersons of the treaty bodies in September 1994, when concern had been expressed that the data should reflect actual needs. She asked the Committee what was the best way to proceed and whether some members of the Committee could be designated to work with the Association.

4. The CHAIRPERSON accepted, with thanks, Mrs. Bonoan-Dandan's offer to work with the Association and said he attached great importance to the project. He had been critical of the secretariat in recent years, but an internal management report on the Centre for Human Rights issued in New York a few weeks ago had been even more critical, suggesting that some posts should be frozen and that some projects delayed, including computerization, until the Centre was able to handle them. He believed that the only way computerization would take place at the United Nations was through the work of external collaborators.

5. After a discussion in which Mr. TEXIER, Mr. MARCHAN ROMERO, Mr. ALVAREZ VITA and Mrs. BONOAN-DANDAN took part, the CHAIRPERSON suggested that he should submit to the Committee a revision of the paper on the proposed draft optional protocol providing for the consideration of communications (E/C.12/1994/12) for its consideration on 5 December. That text would reflect the Committee's discussions on the matter but would eliminate specific drafting provisions and eventually be submitted to the Commission on Human Rights.

6. It was so decided.

Draft structure for the preparation of concluding observations

7. The CHAIRPERSON said that since the paper submitted by Mr. Marchán Romero was available only in Spanish, he would request Mr. Marchán Romero to read it out part by part. The amended passages would appear in English in the summary record.

8. Mr. MARCHAN ROMERO, introducing his revised paper, said that it incorporated the many useful comments made by members of the Committee in response to the original document, which he had submitted at the previous session. It should not be regarded as a rigid set of rules for the drafting of concluding observations, but merely a guide.

9. Reading out the revised version and drawing attention to the specific changes that had been made, he said that in part "A. INTRODUCTION", he had deleted paragraph (b) on the level of the delegation and the expression of appreciation to a State party if the delegation consisted of governmental representatives or experts sent from the State party for that purpose, because not all States were in a position to send such high-level delegations, and what counted was that States should respond to the invitation to engage in constructive dialogue with the Committee.

10. Turning to part "B. GENERAL EVALUATION OF THE REPORT", he said that paragraph (d) had been recast to take into account the comments of Mrs. Jimenez Butragueño and currently read as follows:

> "Has the delegation of the State party submitted full and detailed information in reply to the list of written questions by the Committee? Assess the written replies and evaluate whether they are available in sufficient time to be considered by the Committee."

11. Paragraph (e) was new and read as follows:

> "Has the delegation of the State party replied in a satisfactory fashion to the oral questions formulated by the Committee?"

12. The subsequent paragraphs were renumbered accordingly.

13. A new paragraph (j) had been added in response to comments by Mr. Wimer Zambrano and Mr. Texier and read as follows:

> "Following the general evaluation of the report submitted - including that relating to paragraphs (c), (d) and (e) of these guidelines - the Committee would decide to what extent the State party has complied with its specific obligations under the Covenant, making a clear distinction between the quality of the report and the quality of the human rights policy of that country.
>
> For this evaluation, the Committee will take into account, among other factors, the following four levels of human rights protection:
>
> - level 1: protection of basic human needs

- level 2: current protection of human rights

- level 3: obtainable level of human rights protection in the current situation

- level 4: ideal protection of human rights."

14. Mr. GRISSA took issue with the reference to "ideal protection" under level 4 in paragraph (j), because such protection would be difficult to assess. In his view, it should be deleted.

15. Mrs. JIMENEZ BUTRAGUEÑO suggested inserting a reference to legal provisions and case-law in the new paragraph (h), which was identical with the old paragraph (g). It was also unclear to her what was meant by level 3 in paragraph (j).

16. Mr. ALVAREZ VITA said that he was in favour of including a reference to article 1 of the Covenant and the right to self-determination and to the international assistance that States must provide in accordance with the provisions of the Covenant. Concerning the proposed paragraph (j), he said that serious confusion might arise in distinguishing between human rights and basic human needs.

17. Mr. MARCHAN ROMERO, thanking the members of the Committee for their comments, said that paragraph (j) had been drawn up on the basis of comments by Ms. Taya, whose written proposal he had attempted to reflect almost literally. It was unfortunate that she was not present. But if he understood her intention, the Committee would have four levels of possible evaluation. Level 4 was virtually inaccessible, but all States might aspire to it. Clearly, it was difficult to evaluate such a level, and it might perhaps be better to speak of "optimal" human rights protection in specific fields, for example in education.

18. Ms. Taya's point had been to enable the Committee to have a sense of how a State was currently protecting human rights. He recognized that there was a danger of evaluations being very subjective. Perhaps Ms. Taya had wanted to ensure that the Committee did not generalize by providing it with an opportunity to choose a level that best fit the situation in the State concerned.

19. Concerning Mr. Alvarez Vita's remark on self-determination and international assistance, he said that those aspects would be covered more clearly in a new draft.

20. Mr. GRISSA said that the Committee had no measuring instrument and must judge each State in its own right. Some States could be expected to have high levels of compliance with the Covenant, while others could not. He would prefer the entire paragraph on the four levels, which were of no use to the Committee, to be deleted.

21. The CHAIRPERSON, speaking as a member of the Committee, agreed and said that the four levels were confusing as to the nature of the legal obligation. If the Committee spoke of the protection of basic human needs, there was a

danger that it would exclude some human rights as not being among those basic human needs. The Committee could not afford to make a distinction between economic rights and "survival" rights. Moreover, the concept of ideal protection unfortunately suggested that States were being compared.

22. Mr. ALVAREZ VITA said that in paragraph (j), there was a contradiction in defining four levels of human rights protection and then drawing a distinction between basic human rights and basic needs. As Ms. Taya was not present, the Committee should postpone its discussion of paragraph (j) until she and Mr. Marchán Romero could confer.

23. Mr. CEAUSU said that to evaluate the behaviour of States, the four levels would need to indicate the quality of human rights. He proposed the following categories: the first level would be for States in which there was no concern whatsoever for realizing economic, social and cultural rights and a total absence of legislation and specific measures; the second level would be for States in which there was formal protection in the form of legislation, but no measures to implement that protection; the third level would pertain to States in which there was real protection in the form of adequate legislation and a Government that took measures to counter specific situations, subject to the financial means available; and the fourth level would relate to optimal protection, i.e. legislation in conformity with the provisions of the Covenant and an economic and social situation that ensured optimal enjoyment of human rights.

24. Mr. GRISSA said that the Committee did not need to await the return of Ms. Taya to continue its work.

25. The points mentioned by Mr. Ceausu were already taken into account by the Committee in evaluating the quality of the report. The provision should not be made a mechanical one.

26. Mrs. BONOAN-DANDAN said that the Committee did not measure degrees of compliance with the Covenant, which would require the use of figures and percentages; it monitored conditions in States parties. The provision should be deleted.

27. Mr. JIMENEZ BUTRAGUEÑO agreed with the two previous speakers. She suggested that the four levels merely be borne in mind by the Committee in drawing up its concluding observations.

28. Mr. MARCHAN ROMERO agreed with the suggestion of Mr. Alvarez Vita, but pointed out that paragraph (j) was not intended as a rigid rule but merely as something to be borne in mind by the Committee.

29. Mr. CEAUSU said that upon reflection he now agreed with Mrs. Bonoan-Dandan and thought that paragraph (j) could be deleted. If the Committee wished to have a small section with a general evaluation of the degree to which countries fulfilled their obligations under the Covenant, that should come after parts C, D and E.

30. Mrs. JIMENEZ BUTRAGUEÑO endorsed that view.

31. Mr. MARCHAN ROMERO, turning to part "C. POSITIVE ASPECTS", said that the first part of the new text took up suggestions made by Mr. Wimer Zambrano and Mr. Texier at the Committee's last session. Did the Committee wish to retain that part?

32. Mr. Alvarez Vita took the Chair.

33. Mr. GRISSA asked whether it was wise to draw particular attention to the rights covered by the different articles in paragraph (a) of part C.

34. Mrs. JIMENEZ BUTRAGUEÑO said that she had a similar problem. The Committee also needed to take account of progress made in implementing article 3 of the Covenant.

35. Mr. CEAUSU agreed with Mr. Marchan Romero's proposals. The division of the rights into three categories - economic, social and cultural - followed the title of the Covenant.

36. In connection with article 23, he suggested that States should be asked to include in their reports information concerning any effects on the enjoyment of economic, social and cultural rights of participation in bilateral or multilateral agreements. Reporting countries had often mentioned the structural adjustment policies adopted in conjunction with IMF or World Bank assistance, for instance.

37. The CHAIRPERSON agreed with the remarks made by Mrs. Jimenez Butragueño and Mr. Ceausu on part C of the text.

38. Mr. MARCHAN ROMERO, replying to Mr. Grissa, said that the methodology of the Committee in making its concluding observations had been somewhat chaotic. Some discipline would be imposed by recalling the sequence of the articles of the Covenant. He thanked Mr. Ceausu for his suggestion.

39. Mrs. JIMENEZ BUTRAGUEÑO, turning to part "D. NEGATIVE ASPECTS", asked for the word "inadequate" in the second line of paragraph (a) to be replaced by "unsatisfactory" or perhaps by "unsatisfactory or inadequate".

40. Mr. GRISSA, supported by Mrs. BONOAN-DANDAN, said that he preferred the term "inadequate", which was more objective than "satisfactory".

41. Mrs. JIMENEZ BUTRAGUEÑO, moving on to part "E. FACTORS IMPEDING THE IMPLEMENTATION OF THE COVENANT", requested the inclusion of elderly people and the disabled in the list of the most vulnerable social groups in paragraph (c). Moreover, women should head that list.

42. Mrs. BONOAN-DANDAN said that she had no changes to propose but wished to record her appreciation of Mr. Marchan Romero's work on a section that was probably the most important part of the concluding observations.

43. Mr. GRISSA also expressed his appreciation of the work done by Mr. Marchan Romero.

44. He proposed inserting "the level of economic development" as the first of the economic factors listed in paragraph (b).

45. Mr. CEAUSU agreed with the text proposed by Mr. Marchan Romero and with Mr. Grissa's proposed amendment.

46. He proposed adding in the special situations listed in paragraph (a), "countries in transition towards a new economic and political system" so as to take account of the upheavals at present taking place in central and eastern Europe.

47. Mrs. JIMENEZ BUTRAGUEÑO proposed rewording paragraph (e) by including the word "full" before "control of the State party".

48. Mr. TEXIER agreed with all the proposals made for additions to Mr. Marchan Romero's excellent text.

49. It might, however, be more logical to place part E before parts C and D in order to make it clear that some factors impeding implementation of the Covenant were outside the control of the State party.

50. Mr. GRISSA endorsed that suggestion.

51. In connection with paragraph (a), he said that since "national reconstruction" was a very vague term, he proposed to amend it to read "economic and political reconstruction". That would take account of situations in countries like Angola and Somalia as well as of the transitions from State-dominated to market-oriented systems, mentioned by Mr. Ceausu.

52. Mrs. JIMENEZ BUTRAGUEÑO said that she agreed with the amendments proposed by Mr. Grissa and Mr. Texier.

53. Mr. GRISSA, turning to part "F. SUGGESTIONS AND RECOMMENDATIONS" drew attention to the words "particular population groups" in paragraph (a), subparagraph 1. He pointed out that the Covenant existed to protect rights, not population groups. Mention should therefore be made of the protection of the rights of population groups whose rights were being violated. He wondered whether, in paragraph (a), subparagraph 4, the reference should be to the dissemination of information on human rights in general and the Covenant in particular rather than to the dissemination of the Covenant.

54. Mr. TEXIER said that he was generally satisfied with the text but he would like to have the recommendations enlarged a little, since the wording as it stood did not cover the full range of recommendations which the Committee made, such as the dispatch of a mission.

55. Mr. Alston resumed the Chair.

56. Mr. ALVAREZ VITA, referring to paragraph (a), subparagraph 1, said that he would prefer not to mix up "basic human needs" with human rights. However, if the term "basic human needs" was retained, it should be followed by the words "indispensable for the enjoyment of human rights".

57. The CHAIRPERSON said that he would strongly endorse the elimination of the reference to "basic human needs".

58. Mr. MARCHAN ROMERO agreed with Mr. Texier about the need to enlarge the scope of the recommendations. In some situations an immediate response was required and the Committee could not wait until the next periodic report was submitted.

59. Mrs. BONOAN-DANDAN said that she was allergic to the term "basic human needs", which had been highly politicized and was sometimes used to divert attention away from basic human rights.

60. The CHAIRPERSON observed that "basic human needs" was a general, open-ended and undefined concept, whereas in the case of economic, social and cultural rights there was a clear normative framework under which States assumed clear obligations.

61. Mrs. JIMENEZ BUTRAGUEÑO agreed with Mr. Texier's comment on paragraph (b). It would be advisable to list all the possibilities, including visits to the country concerned.

62. Mr. KOUZNETSOV, referring to paragraph (b), said that it would be dangerous for the Committee to exceed its mandate, which allowed for general recommendations and general comments. For example, the Committee could hardly recommend to a Government that it should build a given number of housing units over a given period of time. Perhaps Mr. Marchan Romero could give an explanation.

63. Mr. MARCHAN ROMERO replied that he was not sure whether Mr. Kouznetsov had been referring not only to the word "recommendation" in the heading but also to paragraph (b), where no mention was made of "recommendations". The purpose of paragraph (b) was to enable the Committee, after it had considered a State party's report, to give the State party specific indications of any failure to comply with its obligations under the Covenant and of how the situation might be remedied. To that end, the Committee should be able to make specific observations and to suggest concrete measures that might be taken.

64. Mrs. JIMENEZ BUTRAGUEÑO said that paragraph (b) mixed up two different points: on the one hand, there were observations that could be made and measures that could be taken, and on the other there were the arrangements for requesting such measures.

65. Mr. TEXIER pointed out that in several previous recommendations the Committee had requested the taking of specific measures, as had been the case with Zaire in respect of article 13. In the oral discussion with the delegation of the Dominican Republic several measures had been requested and the delegation had agreed to them. Thus there was not so much difficulty in requesting specific measures in serious cases.

66. Mr. KOUZNETSOV explained that he was mainly concerned about the level of precision which the Committee could allow itself. The Committee could give its views on a specific law or recommend that a State party should bring its legislation into line with the Covenant in a specific area. On that basis he had no misgivings, but the Committee must not go too far.

67. The CHAIRPERSON observed that the attempt to find a formulation that would cover all the concerns expressed was doomed to failure. The matter should therefore be left open-ended. The Committee would not wish to request a Government to build a specific number of housing units over a given period of time, but it could complain if blacks were barred from certain housing units. Discretion was called for. He thanked Mr. Marchan Romero for his work and requested him to produce a revised draft of his document.

68. After a brief discussion in which the CHAIRPERSON, Mr. GRISSA, Mrs. BONOAN-DANDAN, Mrs. JIMENEZ BUTRAGUEÑO and Mr. ALVAREZ VITA took part, the CHAIRPERSON suggested that, since the report of Suriname could not be considered at the next meeting as originally arranged and since the documentation was not yet available for the discussion of other scheduled items, the Committee should not meet in the afternoon, allowing members more time in which to study the existing documentation.

69. It was so agreed.

The meeting rose at 1 p.m.